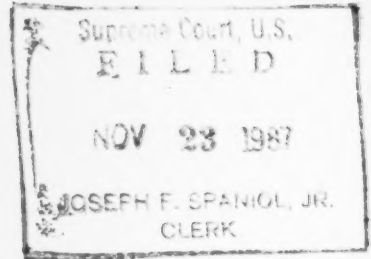


EDITOR'S NOTE

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NO. _____



IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

Mary Catherine Halvorsen,

Petitioner,

vs.

Ferguson & Burdell,

Respondent.

PETITION FOR WRIT OF MANDAMUS TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
AND
THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

M. C. Halvorsen
8324 N.E. Hidden Cove Road
Bainbridge Island, WA 98110
(206) 842-5439

Petitioner Pro Se

2017

QUESTIONS PRESENTED

Is it a basic infringement on an individual's Constitutional right to prosecute an appeal in a Federal Circuit Court of Appeals other than the one geographically designated for such appeals after the appellant could not receive a fair and impartial hearing of the appeal in the correct geographically located Circuit?

The question presented for review is a question of jurisdiction of an appeal filed to a Circuit Court other than the one geographically designated for a particular District Court because the appellant could not receive a fair and impartial hearing of the appeal in the geographically designated Circuit.

PARTIES TO THE PROCEEDING

Petitioner: M. C. Halvorsen, Pro Se

Respondent: Ferguson & Burdell, A
Professional Service Partnership

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No. ____ - ____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1987

Mary Catherine Halvorsen,

Petitioner,

vs.

Ferguson & Burdell,

Respondent.

PETITION FOR WRIT OF MANDAMUS TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT AND
THE UNITED STATES DISTRICT COURT
W. DISTRICT OF WASHINGTON AT SEATTLE

1. Petitioner is the appellant in the case.
2. Petitioner prays for a Writ of Mandamus and
/or Writ of Certiorari to the Eighth Circuit
Court of Appeals to accept the appeal of
Petitioner and to the District Court of the
Western District of Washington at Seattle
to process petitioner's appeal.

OPINION BELOW

The opinion below is that the Eighth Circuit Court of Appeals refused to accept Petitioner's appeal and the Clerk at the District Court for the Western District of Washington at Seattle refused to process Petitioner's appeal to the Eighth Circuit.

JURISDICTION & STATUTES INVOLVED

This Court has jurisdiction under 28 USC §331 and 28 USC §1441; Petition for Writ of Mandamus and Petition for Writ of Certiorari.

STATEMENT OF THE CASE

Mary Catherine Halvorsen, Petitioner, petitions the Court to settle a controversy on jurisdiction of a United States Appellate Court. The background is as follows:

Petitioner tried to file her suit against Ferguson & Burdell in the United States District Court, Western District of Washington in Tacoma, rather than in Seattle, because she could not receive a fair hearing in Seattle.

The District Court in Tacoma, however, refused to allow her to file there and sent the case to Seattle.

The defendants petitioner is suing and the attorneys representing defendants are wealthy, influential law firms with franchise offices in Washington, D.C. and possibly other places as well. One of the defendants as well as one of the attorneys representing the defendants is a past president of the Washington State Bar Association. In addition, the attorneys for defendants also have a partner who serves in the state legislature as Chairman of the State Senate Judiciary Committee and who raised every judge's salary in the state of Washington while continuing to practice before the same judges whose salaries he had raised. Another partner in this same firm headed the Judicial Qualifications Commission, the discipline Commission in this state, serving at the same time these other partners served in the aforementioned capacities.

time these other partners served in the aforementioned capacities.

With influence like that in Seattle, Petitioner knew she would not receive a fair hearing and asked The District Court at Seattle for a change of venue. The District Court denied the Motion for Change of Venue and promptly dismissed her suit, as she knew they would. The judge who dismissed the suit is currently embroiled in a dispute with a judge in Tacoma over her objectivity.

Petitioner then filed Notice of Appeal (Appendix A) to the Eighth Circuit rather than the Ninth Circuit, because, again, she can not get a fair hearing there. The Ninth Circuit is very male chauvinist; denied women comparable worth; upheld a state award to an ex-husband to search his ex-wife's home four times a year; and never allows women oral argument. Petitioner's appeal would be doomed before she even files her Brief if she must file in the Ninth Circuit.

The Clerk at the District Court for the

Western District of Washington at Seattle, called Petitioner and told her that she could not process an appeal to the Eighth Circuit. Petitioner then wrote a letter, (Appendix B), telling the Clerk that she would send her appeal directly to the Eighth Circuit, which she did. The Clerk at the Eighth Circuit then returned the appeal with a letter stating he could not accept it as he had no jurisdiction. (Appendix C).

REASONS FOR GRANTING THE WRIT(S)

CAN A CIRCUIT COURT ACCEPT JURISDICTION TO HEAR AN APPEAL FROM AN APPELLANT WHO FILES IN A CIRCUIT COURT OTHER THAN THE ONE GEOGRAPHICALLY DESIGNATED IF THE APPELLANT CANNOT RECEIVE A FAIR HEARING IN THE ONE DESIGNATED?

The idea of an impartial trial is a fundamental cornerstone of our legal system. If a judge is prejudiced, the persons involved in the lawsuit cannot receive a fair trial and are thus denied due process of law.

The Washington State Courts have long recognized this principal. In State v. Cater's Motor

Freight, 27 Wn.2d 661, 667 (1947), the Court said:

The purpose of the constitutional guaranty of law is to protect the individual from arbitrary exercise of the powers of government.

At page 549, quoting from State ex rel. Barnard v. Board of Education, 19 Wash. 8, 52 Pac. 317, 67 Am.St. 706, 40 L.R.A. 317, the Court further states:

The principal of impartiality, disinterestedness and fairness, on the part of the judge, is as old as the history of the courts . . .

Further, in State ex rel. McFerran v. Justice Court, 32 Wn.2d 544 (1949), the court said:

It is fundamental that trial before a biased and prejudiced Judge would constitute denial of due process of law.

The jurisdiction question is not settled in the Federal Courts. 28 USC §1404 deals with the broad powers to transfer. If the ends of justice will be served, the transfer must be done. The only case cited is Norwood v. Kirkpatrick, 349 U.S. 29, 99 L.Ed. 789 (1955), a case which discusses how broad the power of another court accepting jurisdiction in the name of fairness.

50 A.L.R.3d 765 states that changes are necessary and proper when they are "to promote the ends of justice by eliminating the effect of local prejudices".

If a particular court exhibits discrimination toward women in general and has strong ties to the wealthy law firms of the area it serves, than an appellant should be able to file in another Circuit Court of Appeals.

CONCLUSION

For the foregoing reaons, appellant should be allowed to file her appeal with the Eighth Circuit Court of Appeals.

Respectfully submitted,

M. C. Halvorsen

Petitioner Pro Se



APPENDIX A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARY CATHERINE HALVORSEN,)	
)	
Plaintiff,)	NO. C87-617R
v.)	
)	NOTICE OF APPEAL
FERGUSON & BURDELL, et al.,)	
)	
Defendants.)	

Notice is hereby given that Mary Catherine Halvorsen, plaintiff above-named, hereby appeals to the United States Court of Appeals for the Eighth Circuit from the Order dismissing plaintiff's case against Ferguson & Burdell, dated August 4, 1987, entered August 4, 1987, and received by plaintiff August 7, 1987

Plaintiff is appealing to the Eighth Circuit because it is common knowledge women cannot obtain a fair hearing from the Ninth Circuit. Witness the comparable worth decision.

DATED this 1st day of September 1987.

(Signature)

Mary Catherine Halvorsen, plaintiff
8234 N.E. Hidden Cove Road
Bainbridge Island, Washington 98110
Telephone: (206) 842-5439

APPENDIX B

8324 N.E. Hidden Cove Road
Bainbridge Island, Wash. 98110
September 3, 1987

Clerk of the Court
United States District Court
1010 Fifth Avenue
Seattle, Washington

Re: NO. C87-617R

Dear Clerk of the Court:

Pursuant to our conversation this morning wherein you informed me that you could not process an appeal to the Eighth Circuit Court of Appeals, I am writing this letter.

I will send my appeal directly to the Eighth Circuit myself.

Thank you for your attention to this matter.

Sincerely yours,

(Signature)
Mary Catherine Halvorsen
plaintiff

cc: David W. Ross
Karr, Tuttle et al.,
2500 Third Avenue Building
1111 Third Avenue
Seattle, Washington 98101



APPENDIX C

8324 N.E. Hidden Cove Road
Bainbridge Island, Wash. 98110
September 3, 1987

Clerk of the Court
United States Court of Appeals
Eighth Circuit
511 U.S. Court and Customs House
St. Louis, Mo. 63101

Re: C87-617R

Dear Clerk of the Court:

Enclosed herewith are the following:

NOTICE OF APPEAL
CERTIFICATION OF MAILING
LETTER TO CLERK OF THE COURT, U.S.
DISTRICT COURT, SEATTLE

As per my letter to the Clerk of the District Court in Seattle, I am sending my appeal directly to you for processing.

Thank you for your attention in this matter.

Very truly yours,

(Signature)
Mary Catherine Halvorsen

cc: David W. Ross
Karr, Tuttle et al.
2500 Third Avenue Building
1111 Third Avenue
Seattle, Washington 98101

Clerk of the Court
U.S. District Court
Seattle, Washington



APPENDIX D

UNITED STATES COURT OF APPEALS
For the Eighth Circuit
U.S. Court & Custom House
1114 Market Street
St. Louis, Missouri 63101

Robert D. St. Vrain
Clerk

324-425-5600
FTS: 279-5600

Ms. Mary Catherine Halvorsen
8324 N.E. Hidden Cover Rd.
Bainbridge Island, WA 98110

Re: No. _____ Mary Catherine Halvorsen, vs.
Ferguson & Burdell, et al.

Dear Ms. Halvorsen:

Receipt is acknowledged of your letter of September 3, 1987, and enclosures. Your notice of appeal is being sent back to the Western District of Washington for processing in compliance with the rules. This court does not have jurisdiction to hear appeals from courts outside this Circuit.

Sincerely,

(Signature)
Robert St. Vrain
Clerk of Court

jh

Enclosures

cc: Bruce Rifkin, Clerk, U.S. District Court,
308 U.S. Courthouse, 1010 5th Ave.,
Seattle, WA 98104
(Dist. Ct. No. C87-617R)



APPENDIX E

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARY CATHERINE HALVORSEN,)	
)	
Plaintiff,)	NO. C87-617R
v.)	
)	NOTICE OF APPEAL
FERGUSON & BURDELL, et al.,)	TO THE UNITED STATES
)	SUPREME COURT
Defendants.)	

Notice is hereby given that Mary Catherine Halvorsen, plaintiff above-named, hereby appeals to the United States Supreme Court the issue of jurisdiction of filing an appeal in an Appellate Court of another Circuit when the regular Circuit Appellate Court is notably biased against women appellants.

DATED this 21st day of September 1987

(Signature)

Mary Catherine Halvorsen, Appellant
8234 N.E. Hidden Cove Road
Bainbridge Island, Washington 98110
Telephone: (206) 842-5439

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARY CATHERINE HALVORSEN,)	
)	
Plaintiff,)	NO. C87-617R
)	
v.)	ORDER
)	GRANTING
FERGUSON & BURDELL, A FIRM)	DEFENDANTS
CONSISTING OF THE PARTNERS)	MOTION TO
OF WILLIAM H. FERGUSON,)	DISMISS
WILLIAM WESSELHOEFT, DONALD)	AND FOR
McL. DAVIDSON, EDWARD)	SANCTIONS
HILPERT, JR., THOMAS J.)	
GREENAN, HENRY W. DEAN,)	
WILLIAM B. MOORE, C. DAVID)	
SHEPARD, W.J. THOMAS)	
FERGUSON, JAMES E. HURT,)	
WILLIAM D. STITES, BRUCE P.)	
BABBIT, E.P. SWAIN, JR.,)	
CHRISTOPHER KANE, and HENRY)	
C. JAMES, and WILLIAM)	
WESSELHOEFT and MARGARET)	
WESSELHOEFT and THEIR MARI-)	
TAL COMMUNITY,)	
)	
Defendants.)	

The Court, having considered the motion of defendants filed on June 3, 1987 seeking an order dismissing the above-captioned cause of action; the Affidavit of David F. Ross with attached exhibits 1-9; the memoran-

ORDER GRANTING DEFENDANTS MOTION
TO DISMISS AND FOR SANCTIONS - 1



dum of authorities filed in support;
responses of plaintiff; and having
considered the files and pleadings
herein; and

The Court having concluded that
there are no genuine issues of mater-
ial fact with respect to the motion;
and

The Court having concluded that
the above-captioned cause of action
was filed in violation of Rule 11,
Federal Rules of Civil Procedure:

NOW THEREFORE, IT IS ORDERED THAT:

1. Defendants motion to dismiss is
granted;

2. Plaintiff's cause of action is
dismissed with prejudice;

3. Sanctions are awarded to defen-
dants and agianst plaintiff for costs and
reasonable attorney's fees upon proper

ORDER GRANTING DEFENDANTS MOTION
TO DISMISS AND FOR SANCTIONS - 2



LAW OFFICES OF
KARR, TUTTLE, KOCH, CAMPBELL,
MAWER, MORROW & SAX
A PROFESSIONAL SERVICE CORPORATION
1111 THIRD AVENUE, SUITE 2500
SEATTLE, WASHINGTON 98101
(206) 223-1313

substantiation.

DONE IN OPEN COURT THIS 4th
day of August, 1987.

(Signature)
HONORABLE BARBARA ROTHSTEIN

Presented by:

(Signature)
David F. Ross
Karr, Tuttle, Koch, Campbell,
Mawer, Morrow & Sax P.S.
Attorneys for Defendants

ORDER GRANTING DEFENDANTS MOTION
TO DISMISS AND FOR SANCTIONS - 3

Supreme Court, U.S.
FILED

JAN 20 1988

JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1109

IN THE

Supreme Court of the United States

MARY CATHERINE HALVORSEN,

Petitioner,

v.

FERGUSON & BURDELL, A FIRM
CONSISTING OF THE PARTNERS OF
WILLIAM H. FERGUSON, WILLIAM
WESSELHOEFT, DONALD McL.
DAVIDSON, EDWARD HILPERT, JR.,
THOMAS J. GREENAN, HENRY W.
DEAN, WILLIAM B. MOORE, C. DAVID
SHEPPARD, W.J. THOMAS FERGUSON,
JAMES E. HURT, WILLIAM D.
STITES, BRUCE P. BABBIT, E.P.
SWAIN, JR., CHRISTOPHER KANE, and
HENRY C. JAMES; and WILLIAM
WESSELHOEFT and MARGARET
WESSELHOEFT and THEIR MARITAL
COMMUNITY,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO
PETITION FOR WRIT OF MANDAMUS TO THE
UNITED STATES COURT OF APPEALS FOR THE
EIGHTH CIRCUIT

1111 Third Ave.
Suite 2500
Seattle, WA 98101
(206) 223-1313

DAVID F. ROSS
Of Karr, Tuttle, Koch,
Campbell, Mawer, Morrow
& Sax, P.S.,
Attorneys for
Respondents

aBCD Legal Printers. Seattle. Washington

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Questions Presented for Review

(1) Where the United States District Court for the Western District of Washington at Seattle dismissed petitioner's complaint for legal malpractice because it had already been concluded adversely to her in previous state and federal court actions and the District Court imposed sanctions against her pursuant to Fed. R. Civ. P. 11, was the United States Court of Appeals for the Eighth Circuit correct in refusing petitioner's Notice of Appeal?

(2) Should the Court impose sanctions against petitioner pursuant to Rule 49.2 and 28 U.S.C. § 1912 for filing a frivolous appeal?

Parties to This Proceeding

Petitioner is Mary Catherine Halvorsen.

Respondents are the law firm of Ferguson & Burdell and the partners of the firm and their marital communities.

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A. OPINION OF COURTS BELOW

The United States District Court for the Western District of Washington dismissed petitioner's complaint for legal malpractice against respondents because the issues had already been litigated in the Washington courts and the results were adverse to petitioner. The District Court also imposed sanctions against petitioner pursuant to Fed. R. Civ. P. 11. See, Appendix.

Thereafter, petitioner attempted to file a Notice of Appeal in the United States District Court in Seattle to the United States Court of Appeals for the Eighth Circuit. The District Court Clerk refused to process such a Notice and Halvorsen undertook to do so herself. The Clerk of the Eighth Circuit Court of Appeals refused the Notice because the Court did not have jurisdiction to hear

appeals from outside of that Circuit.
See, Appendix.

B. STATEMENT OF JURISDICTIONAL GROUNDS

The District Court judgment at issue here was entered on September 9, 1987. The original judgment had been entered on August 5, 1987. Petitioner's original Notice of Appeal was dated September 1, 1987. Various letters between Halvorsen and the Clerks of the District Court and the Eighth Circuit ensued. The letter of the Clerk of the United States Court of Appeals for the Eighth Circuit declining to process the appeal was dated September 10, 1987.

Petitioner filed an amended Notice of Appeal and a Notice of Appeal to this Court dated September 21, 1987. Her Petition for a Writ of Mandamus and/or Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit was placed

in the mail on November 20, 1987. After correspondence between the Clerk of this Court and petitioner, Halvorsen determined that she would file a petition for a writ of mandamus.

Petitioner has failed to establish this Court's jurisdiction over this case. Halvorsen alleges that jurisdiction is conferred upon this Court by 28 U.S.C. § 331 and 28 U.S.C. § 1441. This is incorrect. 28 U.S.C. § 331 pertains to the Judicial Conference of the United States and confers no special extraterritorial jurisdiction on the Circuit Courts of Appeals. 28 U.S.C. § 1441 pertains to removal of actions and again confers no special extraterritorial jurisdiction on the circuits. Petitioner has failed to demonstrate appropriate jurisdictional grounds for review.

C. STATUTES AT ISSUE IN THE CASE

28 U.S.C. § 1294 states with respect to the jurisdiction of the Circuit Courts of Appeals:

Except as provided in sections 1292(c), 1292(d), and 1295 of this title, appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeals as follows:

(1) From a district court of the United States to the court of appeals for the circuit embracing the district;

28 U.S.C. § 1404 states with respect to the transfer of cases:

(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

As to frivolous appeals, Rule 49.2 states:

When an appeal or petition for writ of certiorari is frivolous, the Court may award the appellee or the respondent appropriate damages.

Similarly, 28 U.S.C. § 1912 states:

Where a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and single or double costs.

D. STATEMENT OF THE CASE

The present federal court action is petitioner's third attempt to sue the Seattle law firm of Ferguson & Burdell for alleged legal malpractice. Ferguson & Burdell were originally retained to represent Halvorsen in her divorce proceedings which culminated in a three-week trial in December, 1977. At the conclusion of the trial, presided over by the Honorable Jack Scholfield, the court made an extensive oral ruling which was subsequently reduced to Findings of Fact and Conclusions of Law. Ferguson & Burdell represented Halvorsen on a Motion for Reconsideration and also commenced her appeal. There-

after, Halvorsen terminated Ferguson & Burdell as her counsel and selected attorney Phillip Malone to appeal her divorce through Division I of the Court of Appeals, the Washington Supreme Court and this Court. The trial court's decision was affirmed at each stage of the appeal.

In October, 1980, acting pro se, petitioner Halvorsen brought a state court action against Ferguson & Burdell, alleging breach of contract and legal malpractice. In March, 1983, attorney Jerry Schumm became counsel of record for Halvorsen. By a letter dated April 22, 1983, the initial eight theories of recovery for Halvorsen against Ferguson & Burdell were narrowed to three. Thereafter, Ferguson & Burdell moved for summary judgment. The motion was heard by the Honorable Robert H. Peterson, a visiting judge from Pierce County. At the time

of judgment on the motion, counsel for Halvorsen stipulated on the record that two more issues outlined in his April 22, 1983 letter were not being pursued and could thereafter be dismissed. After a lengthy review of the entire record over two days, and oral argument by the parties, Judge Peterson granted the motion for summary judgment and entered an Order Granting Defendants' Motion for Summary Judgment. Halvorsen moved for reconsideration, but the motion for reconsideration was denied. The Washington Court of Appeals, Division I, affirmed the summary judgment in each and every respect, 46 Wn. App. 708, 735 P.2d 675 (1986). Halvorsen moved for reconsideration, which was denied, and then petitioned the Washington Supreme Court for review. In her Petition for Review, Halvorsen specifically alleged that the case involved a significant ques-

tion of law under the Washington State Constitution in that Halvorsen was denied her right to a trial by jury as guaranteed under Article I, paragraph 21 of the Washington State Constitution because the case had been resolved by summary judgment. The Supreme Court of Washington denied review at 108 Wn.2d 1008 (1987).

In 1982, Halvorsen filed a complaint in the United States District Court for the Western District of Washington, Halvorsen v. State of Washington, (Cause No. C82-1169) against Ferguson & Burdell for legal malpractice, and against the State of Washington, Judge Jack P. Scholfield, Justices Reed, Petrich and Pearson of the Washington State Court of Appeals, Division II, and her opposing counsel, Robert Frederick, for violation of her Fourth, Fifth and Fourteenth Amendment rights. The District Court dismissed

the action for failure to state a claim, and Halvorsen appealed to the United States Court of Appeals for the Ninth Circuit in Cause No. 83-3828. The Ninth Circuit affirmed the District Court dismissal of Halvorsen's complaint and imposed sanctions against her for pursuing a frivolous appeal.

In April, 1987, Halvorsen filed yet another federal court action against Ferguson & Burdell for legal malpractice, an action virtually identical in every respect to her prior state court action filed in October, 1980 and her federal court action filed in October, 1982. In the present action, Halvorsen further purported to raise a federal constitutional issue by arguing that she was allegedly deprived of her right to trial by jury as a result of the summary judgment. The United States District Court

for the Western District of Washington dismissed Halvorsen's complaint and imposed sanctions against her. She sought review by the Eighth Circuit rather than the Ninth Circuit, generally alleging that the Ninth Circuit discriminated against women. The Eighth Circuit Clerk refused her Notice of Appeal. She now seeks a writ of mandamus to the Eighth Circuit from this Court.

E. REASONS WHY A WRIT SHOULD NOT BE ALLOWED

A writ of mandamus should not be allowed in this case and sanctions should be imposed by this Court against Halvorsen for filing a frivolous petition.

(1) Halvorsen Failed to State a Claim Below

From a substantive standpoint, the District Court was correct in dismissing Halvorsen's complaint. Halvorsen failed to establish a prima facie case of legal

malpractice against Ferguson & Burdell, Daugert v. Pappas, 104 Wn.2d 254, 704 P.2d 600 (1985); Halvorsen v. Ferguson, 46 Wn. App. 708, 735 P.2d 675 (1986), rev. den., 108 Wn.2d 1008 (1987).

All of Halvorsen's claims have previously been adjudicated against her. She cannot, under the doctrine of res judicata, re-litigate them in the federal courts. See, e.g., Williams v. State of Washington, 554 F.2d 369 (9th Cir. 1977); Clark v. Watchie, 513 F.2d 994 (9th Cir. 1975), cert. den., 423 U.S. 841, 96 S. Ct. 72, 46 L. Ed. 2d 60 (1975).

Further, her claim is barred by the applicable Washington statute of limitations. In 1976, the Washington Supreme Court adopted the discovery rule in a statute of limitations case in Peters v. Simmons, 87 Wn.2d 400, 406, 552 P.2d 1053, 1056 (1976), stating:

[W]e hold that the statute of limitations for legal malpractice should not start to run until the client discovers, or in the exercise of reasonable diligence should have discovered the facts which give rise to his or her cause of action.

The statute of limitations for legal malpractice is three years. RCW 4.16.080. Halvorsen "knew" of her cause of action at least by October 22, 1980 when she filed a virtually identical lawsuit in state court. The present federal action is filed more than six years after her original lawsuit against Ferguson & Burdell was filed, and more than nine years after her divorce action which allegedly gave rise to the claim.

Finally, under Washington law, summary judgment is appropriate to avoid a useless trial, Balise v. Underwood, 62 Wn.2d 195, 381 P.2d 966 (1963). The Washington Supreme Court has concluded that a

plaintiff was not deprived of her right to a trial by jury by granting summary judgment, Nave v. City of Seattle, 68 Wn.2d 721, 415 P.2d 93 (1966), appeal dismissed, 385 U.S. 450, 87 S. Ct. 614, 17 L. Ed. 2d 513 (1967), rehearing den., 386 U.S. 929, 87 S. Ct. 853, 17 L. Ed. 2d 801 (1967).

The substantive aspects of Halvorsen's third action against Ferguson & Burdell are patently meritless.

(2) The Eighth Circuit Properly Refused Halvorsen's Notice of Appeal

With respect to the ostensible reasons for Halvorsen's present petition, Halvorsen has not demonstrated that any of the criteria set forth in Rule 17 are applicable in this case.

The Clerk of the United States Court of Appeals for the Eighth Circuit merely complied with 28 U.S.C. § 1294. It is error for a Circuit to accept a case from

outside its territorial jurisdiction, Preston Co. v. Raese, 335 F.2d 827 (4th Cir. 1964); Roofing & Sheet Metal Services, Inc. v. La Quinta Motor Inns, Inc., 689 F.2d 982 (11th Cir. 1982).

Halvorsen also asserts that the broad power of the federal courts to transfer a case, 28 U.S.C. § 1404, should be invoked, but 28 U.S.C. § 1404 only provides that the district courts may transfer cases and makes no reference to Circuit Courts of Appeals. 28 U.S.C. § 1404 does not sustain her position. First, the power to transfer could only have been invoked by the United States District Court for the Western District of Washington and not a Circuit Court of Appeals. Norwood v. Kirkpatrick, 349 U.S. 29, 75 S. Ct. 544, 99 L. Ed. 2d 789 (1955), cited by petitioner, clearly confirms this view. This case pertains to the authority of a dis-

strict court to transfer a case under 28 U.S.C. § 1404(a). Halvorsen thus cites no authority for extraterritorial jurisdiction of the Circuit Courts of Appeals.

Second, even if transfer were somehow appropriate under federal law, Halvorsen has failed to set forth proper grounds for transfer. She asserts in her Petition at 4:

The Ninth Circuit is very male chauvinist; denied women comparable worth; upheld a state award to an ex-husband to search his ex-wife's home four times a year; and never allows women oral argument. Petitioner's appeal would be doomed before she even files her Brief if she must file in the Ninth Circuit.

This is unsupported.

She also alleges in her Petition at 3:

The defendants petitioner is suing and the attorneys representing defendants are wealthy, influential law firms with franchise offices in Washington, D.C. and possibly other places as well. One of the defendants

as well as one of the attorneys representing the defendants is a past president of the Washington State Bar Association. In addition, the attorneys for defendants also have a partner who serves in the state legislature as Chairman of the State Senate Judiciary Committee and who raised every judge's salary in the state of Washington while continuing to practice before the same judges whose salaries he had raised. Another partner in this same firm headed the Judicial Qualifications Commission, the discipline Commission in this state, serving at the same time these other partners served in the aforementioned capacities.

This is simply erroneous. Karr, Tuttle, Koch, Campbell, Mawer, Morrow & Sax, P.S., counsel for Ferguson & Burdell, has no "franchise office" or any other office in Washington, D.C. F. Lee Campbell of that firm is a past president of the Washington State Bar Association and a past chair of the Washington Judicial Qualifications Commission; he is not involved with this litigation. Philip A. Talmadge of that

firm is a past chair of the Washington State Senate Judiciary Committee. He did not "raise every judge's salary in the state of Washington" because prior to 1987, that required an act of the full Legislature, signed by the Governor. Since 1987, Washington state judicial salaries have been set by a citizens commission independent of the Legislature in accordance with a constitutional amendment adopted by Washington voters at the polls in November, 1986. See, RCW 43.03.300 et. seq.

William Wesselhoeft of Ferguson & Burdell is a past president of the Washington State Bar Association, but Ferguson & Burdell does not have a branch office in Washington, D.C.

Halvorsen obviously impugns the integrity of the Washington State judiciary and the judges of the Ninth Circuit,

but all of this, of course, is thoroughly irrelevant as to the independent federal judges of the Ninth Circuit Court of Appeals. Halvorsen simply failed to demonstrate that transfer to the Eighth Circuit is appropriate.

(3) Halvorsen's Petition Is Frivolous and Sanctions Should Be Imposed Against Her

This Court should impose sanctions against Halvorsen pursuant to Rule 49.2 and 28 U.S.C. § 1912. The District Court properly determined that Halvorsen's case was groundless.

The imposition of sanctions is appropriate where the action is clearly and fundamentally without merit in law or in fact. Cook v. Peter Kiewit Sons Co., 775 F.2d 1030 (9th Cir. 1985). In Cook, an employee filed several actions in federal court after his identical state court action was dismissed. The court found

that the federal actions were "a carbon copy of Cook's previous lawsuits, raising the identical cause of action . . ." The court affirmed the imposition of reasonable attorneys' fees.

The chastisement given to Halvorsen by the Ninth Circuit Court of Appeals in Halvorsen v. State, supra, rings true for the present action:

The only possible defense against the charge that this is vexatious litigation and the prayer for resulting financial sanctions would be the ignorance of the law that a pro se litigant may claim. In dragging one's adversaries into court and running up legal fees and costs, however, no person has the right to a free ride. Somebody has to pay for these excursions. Going into court is serious business. A brief visit to a competent lawyer would have provided Halvorsen with the advice that an appeal would be expensive and frivolous. We do not think conscious ignorance of this kind is a defense.

Memo. Op. at 3-4.

The present action is indeed frivolous for all of the reasons set forth above. Halvorsen is the classic abusive litigant about whom this Court should be concerned. Note, "Abusive Pro Se Plaintiffs in Federal Courts: Proposals for Judicial Controls," 18 U. Mich. J.L. Ref. 93 (1984). See, Clark v. State of Florida, ___ U.S. ___, ___ S. Ct. ___, 90 L. Ed. 2d 330 (1986) (C.J. Burger concur).

CONCLUSION

The petition for a writ of mandamus should be denied. Sanctions for the filing of a frivolous petition should be imposed against petitioner Halvorsen, Rule 49.2; 29 U.S.C. § 1912.

DATED this 17th day of January,
1988.

Respectfully submitted,

David F. Ross
David F. Ross
Of Karr, Tuttle, Koch,
Campbell, Mawer, Morrow
& Sax, P.S.
Attorneys for Respondents

1111 Third Avenue
Suite 2500
Seattle, Washington 98101
(206) 223-1313

BEST AVAILABLE COPY



APPENDIX

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MARY CATHERINE HALVORSEN))	
Plaintiff,)	JUDGMENT IN
)	A CIVIL CASE
v.)	
)	
FERGUSON & BURDELL,)	NO. C87-617R
et al.,)	
)	
Defendants.)	

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that this action is dismissed with prejudice.

Date August 5, 1987

Clerk Bruce Rifkin

(Signature)
(By) Deputy Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARY CATHERINE HALVORSEN,)	
)	
Plaintiff,)	NO. C87-617R
)	
v.)	
)	
FERGUSON & BURDELL, A FIRM)	ORDER
CONSISTING OF THE PARTNERS)	GRANTING
OF WILLIAM H. FERGUSON,)	DEFENDANTS
WILLIAM WESSELHOEFT, DONALD)	MOTION TO
McL. DAVIDSON, EDWARD)	DISMISS
HILPERT, JR., THOMAS J.)	AND FOR
GREENAN, HENRY W. DEAN,)	SANCTIONS
WILLIAM B. MOORE, C. DAVID)	
SHEPARD, W.J. THOMAS)	
FERGUSON, JAMES E. HURT,)	
WILLIAM D. STITES, BRUCE P.))	
BABBIT, E.P. SWAIN, JR.)	
CHRISTOPHER KANE, and HENRY))	
C. JAMES, and WILLIAM)	
WESSELHOEFT and MARGARET)	
WESSELHOEFT and THEIR MARI-)	
TAL COMMUNITY,)	
)	
Defendants.)	
)	

The Court, having considered the motion of defendants filed on June 3, 1987 seeking an order dismissing the above-captioned

ORDER GRANTING DEFENDANTS MOTION
TO DISMISS AND FOR SANCTIONS - 1

cause of action; the Affidavit of David F. Ross with attached exhibits 1-9; the memorandum of authorities filed in support; the responses of plaintiff; and having considered the files and pleadings herein; and

The Court having concluded that there are no genuine issues of material fact with respect to the motion; and

The Court having concluded that the above-captioned cause of action was filed in violation of Rule 11, Federal Rules of Civil Procedure:

NOW THEREFORE, IT IS ORDERED THAT:

1. Defendants motion to dismiss is granted;
2. Plaintiff's cause of action is dismissed with prejudice;
3. Sanctions are awarded to defendants

ORDER GRANTING DEFENDANTS MOTION
TO DISMISS AND FOR SANCTIONS - 2

and against plaintiff for costs and reasonable attorney's fees upon proper substantiation.

DONE IN OPEN COURT this 4th day of August, 1987.

(Signature)
HONORABLE BARBARA ROTHSTEIN

Presented by:

(Signature)
David F. Ross
Karr, Tuttle, Koch, Campbell,
Mawer, Morrow & Sax P.S.
Attorneys for Defendants

ORDER GRANTING DEFENDANTS MOTION
TO DISMISS AND FOR SANCTIONS - 3

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MARY CATHERINE HALVORSEN)	
)	
Plaintiff,)	SUPPLEMENTAL
)	JUDGMENT IN
v.)	A CIVIL CASE
)	
FERGUSON & BURDELL,)	NO. C87-617C
et al.,)	
Defendants.)	

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that defendants shall have of plaintiff the sum of \$2,111.00 for reasonable attorneys' fees.

Date 9 September 1987 Clerk BRUCE RIFKIN

(Signature)
(By) Deputy Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARY CATHERINE HALVORSEN,)	
)	
Plaintiff,)	NO. C87-617C
)	
v.)	
)	
FERGUSON & BURDELL, A FIRM)	ORDER AND
CONSISTING OF THE PARTNERS)	JUDGMENT RE
OF WILLIAM H. FERGUSON,)	ATTORNEYS'
WILLIAM WESSELHOEFT, DONALD)	FEE'S
McL. DAVIDSON, EDWARD)	
HILPERT, JR., THOMAS J.)	
GREENAN, HENRY W. DEAN,)	
WILLIAM B. MOORE, C. DAVID)	
SHEPARD, W.J. THOMAS)	
FERGUSON, JAMES E. HURT,)	
WILLIAM D. STITES, BRUCE P.))	
BABBIT, E.P. SWAIN, JR.)	
CHRISTOPHER KANE, and HENRY))	
C. JAMES, and WILLIAM)	
WESSELHOEFT and MARGARET)	
WESSELHOEFT and THEIR MARI-))	
tal community,)	
)	
Defendants.)	
)	

The Court, having considered the
Affidavit of David F. Ross regarding
attorneys' fees filed pursuant to the Court's
Order Granting Sanctions filed on August
ORDER AND JUDGMENT RE
ATTORNEYS' FEES - 1

5, 1987; and having considered the files and pleadings herein and being fully advised

AND having further determined that the attorneys' fees in the amount of \$2,111.00 as set forth in the affidavit are reasonable;

NOW THEREFORE:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendants have judgment against plaintiff in the sum of \$2,111.00 for reasonable attorneys' fees.

DONE IN OPEN COURT this 8th day of September, 1987.

(Signature)

JUDGE BARBARA ROTHSTEIN

ORDER AND JUDGMENT RE
ATTORNEYS' FEES - 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARY CATHERINE HALVORSEN,)	
)	
Plaintiff,)	NO. C87-617R
)	
v.)	NOTICE OF
)	APPEAL
FERGUSON & BURDELL,)	
et al.,)	
)	
Defendants.)	
)	

Notice is hereby given that Mary Catherine Halvorsen, plaintiff above-named, hereby appeals to the United States Court of Appeals for the Eighth Circuit from the Order dismissing plaintiff's case against Ferguson & Burdell, dated August 4, 1987, entered August 4, 1987, and received by plaintiff August 7, 1987.

Plaintiff is appealing to the Eighth Circuit because it is common knowledge women

cannot obtain a fair hearing from the Ninth Circuit. Witness the comparable worth decision.

DATED this 1st day of September 1987.

(Signature)

Mary Catherine Halvorsen, plaintiff
8234 N.E.Hidden Cove Road
Bainbridge Island, Washington 98110
Telephone: (206) 842-5439

8324 N.E. Hidden Cove Road
Bainbridge Island, Wash. 98110
September 3, 1987

Clerk of the Court
United States District Court
1010 Fifth Avenue
Seattle, Washington

RE: NO. C87-617R

Dear Clerk of the Court:

Pursuant to our conversation this morning wherein you informed me that you could not process an appeal to the Eighth Circuit Court of Appeals, I am writing this letter.

I will send my appeal directly to the Eighth Circuit myself.

Thank you for your attention to this matter.

Sincerely yours,

(Signature)
Mary Catherine Halvorsen
plaintiff

cc: David W. Ross
Karr, Tuttle et al.,
2500 Third Avenue Building
1111 Third Avenue
Seattle, Washington 98101

8324 N.E. Hidden Cove Road
Bainbridge Island, Wash. 98110
September 3, 1987

Clerk of the Court
United States Court of Appeals
Eighth Circuit
511 U. S. Court and Customs House
St. Louis, Mo. 63101

RE: C87-617R

Dear Clerk of the Court:

Enclosed herewith are the following:

NOTICE OF APPEAL
CERTIFICATION OF MAILING
LETTER TO CLERK OF THE COURT,
U.S. DISTRICT COURT, SEATTLE.

As per my letter to the Clerk of the District Court in Seattle, I am sending my appeal directly to you for processing.

Thank you for your attention in this matter.

Very truly yours,

(Signature)
Mary Catherine Halvorsen

cc: David W. Ross
Karr, Tuttle et al.,
2500 Third Avenue Building
1111 Third Avenue
Seattle, Washington 98101

Clerk of the Court
U.S. District Court
Seattle, Washington

UNITED STATES COURT OF APPEALS
For the Eighth Circuit
U.S. Court and Custom House
1114 Market Street
St. Louis, Missouri 63101

Robert D. St. Vrain
Clerk

314-425-5600
FTS: 279-5600

Ms. Mary Catherine Halvorsen
8324 N.E. Hidden Cove Rd.
Bainbridge Island, WA 98110

Re: No. _____ Mary Catherine Halvorsen,
vs. Ferguson & Burdell, et al.

Dear Ms. Halvorsen:

Receipt is acknowledged of your letter of September 3, 1987, and enclosures. Your notice of appeal is being sent back to the Western District of Washington for processing in compliance with the rules. This court does not have jurisdiction to hear appeals from courts outside this circuit.

Sincerely

(Signature)
Robert St. Vrain
Clerk of Court

jh

Enclosures

cc: Bruce Rifkin, Clerk,
U.S. District Court
308 U.S. Courthouse, 1010 5th Ave.,
Seattle WA 98104
(Dist. Ct. No. C87-617R)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARY CATHERINE HALVORSEN,)	
)	
Plaintiff,)	NO. 87-617R
)	
v.)	NOTICE OF
)	APPEAL TO
FERGUSON & BURDELL,)	THE UNITED
et al.,)	STATES
)	SUPREME
Defendants.)	COURT
)	

Notice is hereby given that Mary Catherine Halvorsen, plaintiff above-named, hereby appeals to the United States Supreme Court the issue of jurisdiction of filing an appeal in an Appellate Court of another Circuit when the regular Circuit Appellate Court is notably biased against women appellants.

DATED this 21st day of September 1987.

(Signature)

Mary Catherine Halvorsen, Appellant
8324 N.E. Hidden Cove Road
Bainbridge Island, Wash. 98110
Telephone: (206) 842-5439

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARY CATHERINE HALVORSEN,)	
)	
Plaintiff,)	NO. C87-617R
)	
v.)	AMENDED
)	APPEAL
FERGUSON & BURDELL,)	
et al.,)	
Defendants.)	
<hr/>		

Notice is hereby given that Mary Catherine Halvorsen, plaintiff above-named, hereby amends her appeal to include the award of attorneys' fees and judgment filed September 9, 1987.

Since the exact court in which to file the appeal is itself on appeal, plaintiff assumes that her appeal will be held in abeyance until further direction of a higher court.

DATED this 21st day of September 1987.

(Signature)

Mary Catherine Halvorsen,
Plaintiff/Appellant

3

Supreme Court, U.S.
FILED
FEB 8 1988
JOSEPH E. SPANOL, JR.
CLERK

NO. 87-1109

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1987

MARY CATHERINE HALVORSEN,

Petitioner,

vs.

FERGUSON & BURDELL,

Respondents.

REPLY BRIEF OF PETITIONER
IN REBUTTAL

Mary Catherine Halvorsen
8324 N.E. Hidden Cove road
Bainbridge Island, WA 98110

Petitioner Pro Se

2117

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY
AT THE TIME OF FILMING. IF AND WHEN A
BETTER COPY CAN BE OBTAINED, A NEW FICHE
WILL BE ISSUED.

QUESTION PRESENTED FOR REVIEW

(1) Respondents are answering petitioner's petition and cannot change the questions to what they would like them to be.

The dismissal of the case in District Court was for "lack of a genuine material issue of fact" although petitioner had three experts ready and willing to testify.

There is no statement that her case had been concluded adversely in state court.

The issue in this case is whether a Circuit Court other than the one designated can accept an appeal where the petitioner has shown that prejudice exists in the designated Circuit.

(2) Respondent has asked for sanctions because of the contention that any pro se's petition is "frivolous" while petitioner maintains that frivolous violates equal application of the law.

PARTIES TO THIS PROCEEDING

Petitioner is Mary Catherine Halvorsen.

Respondents are the law firm of Ferguson & Burdell and the partners of the firm.

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A. REPLY TO OPINION OF COURTS BELOW

The United States District Court for the Western District of Washington dismissed the Complaint because "there are no genuine issues of material fact" . There is no mention of issues being already litigated. Considering that the Complaint filed in District Court by Petitioner challenges the decision in the Halvorsen v. Ferguson & Burdell 46 Wn. App. 708, 735 P.2d 675; and Daugert v. Pappas 104 Wn.2d 254, 704 P.2d 600 as unconstitutional, it could hardly have been litigated.

Sanctions imposed for a "frivolous" suit are meaningless. "Frivolous" is not defined. It introduces an arbitrary element into the law. Any judge can impose sanctions as he/she pleases. This is not law; this is tyranny.

B. STATEMENT OF JURISDICTIONAL GROUNDS

Somehow there is some misunderstanding on respondents' part regarding jurisdiction. 28 U.S.C. 221 is not cited. 28 U.S.C. 221 is

C. REPLY TO STATUTES AT ISSUE IN THE CASE

"Frivolous" is a term not defined and no standards can be applied to it. As stated above, this introduces an arbitrary element into the law and was probably invented by defense insurance attorneys. That way the term "frivolous" can become a weapon to discourage people from exercising their constitutional rights. This type of Rule should be rescinded and abolished.

D. REPLY TO STATEMENT OF THE CASE

Petitioner's divorce case is not the issue in this appeal and she feels this is raised to divert attention from the real issue.

However, since respondents have brought the matter up, petitioner is compelled to reply. In the divorce case she was indeed represented by Ferguson & Burdell, who always assured her what excellent attorneys they were. The results of their representation were that the husband was awarded five and one-half million dollars in assets while petitioner was awarded fifty thousand dollars and

custody as "fair, just and equitable." Fifty thousand dollars just happened to be what Ferguson & Burdell wanted in attorneys' fees.

Petitioner sued Ferguson & Burdell for malpractice after the appellate judge adamantly stated the arguments made on appeal had not been made in the lower court and could not be considered on appeal. Karr, Tuttle et al., undertook to represent Ferguson & Burdell in their defense insurance capacity.

Petitioner had three experts ready and willing to testify that Ferguson & Burdell committed malpractice against petitioner. The law is that if any plaintiff has one expert, Summary Judgment cannot be granted. Despite the three experts, Judge Petersen, (a judge picked by Karr, Tuttle) after forthrightly stating that he wasn't going to let a jury hear this case, granted Summary Judgment.

The Court of Appeals in Washington State changed the law for legal malpractice; i.e., in Halvorsen v. Ferguson & Burdell, supra., and Daugert v. Pappas, supra., the Court stated that a judge can

decide whether to allow a jury trial. This, of course, leaves the decision to the whim of one man. There is no law involved. It violates the Constitutional right to a trial by jury.

Respondents cite the case of Halvorsen v. the State of Washington (W.D. Wash. No. C82-1169), aff'd, ___ F.2d ___ (9th Cir. 1984) (Cause No. 83-3828) to obfuscate the issue. This was suit under color of law and has nothing to do with this case. That particular case asked the District Court to remove the malpractice case to District Court and accept jurisdiction. The District Court declined, dismissing the respondents so that the malpractice action could go forward in the state court.

Judges Pearson, Reed and Petrich were also sued in that case because they "retroactively waived" a law to give a lower court a jurisdiction it did not have! They also upheld Judge Jack P. Scholfield's award to her ex-husband to search her home four times a year, wantonly violating her fourth amendment rights.

The Ninth Circuit panel was composed of Judges Choi, Goodwin and Anthony Kennedy, the latter of comparable worth fame (or infamy depending on your point of view). These three did not bother to ascertain the facts and were unaware that petitioner had seen three attorneys who felt she had a very good case for the Ninth Circuit. The problem was that each wanted approximately \$10,000.00 to pursue her case, a sum petitioner did not have, which precluded her from having attorneys represent her before that appellate court.

The three judge panel declared out of the blue that if petitioner had consulted an attorney she would have been informed that she had no case! One wonders how these people arrive at their opinions that binding on the people. It is however, indicative of the Ninth Circuit's thinking regarding women pro se.

Petitioner is not re-litigating these issues. She has no way of knowing whether respondents/attorneys are so dense they honestly miss the point, or if this is strategy to confuse the court.

Be all that as it may, the malpractice suit, as stated on page 3, proceeded in state court.

When her appeal was turned down, petitioner filed her case in District Court because her constitutional rights were violated.

She filed because she believes Dauggart v. Pappas, supra., and Halvorsen v. Ferguson & Burdell, supra., are unconstitutional.

Petitioner filed within one month after she had exhausted all state remedies. This has nothing to do with a statute of limitations issue. Petitioner does not believe that respondents' attorneys could possibly be unknowing of the law and believes their position is taken to obfuscate, confuse and divert the attention of the court. It has been a very successful strategy in state court.

The issue in this appeal, however, is the issue of being able to file in a Circuit Court other than the designated one if the designated one is biased.

Respondents' Brief did not answer the issue.

E. REPLY TO REASONS WHY A WRIT SHOULD NOT BE ALLOWED.

A Writ of Mandamus should be allowed in this case. No sanctions should be imposed because this petition is serious and involves constitutional issues. Petitioner does not consider the United States Constitution frivolous and is surprised that respondents and their attorneys do.

(1) Reply to Halvorsen Failed to State a Claim Below

The District Court should not have dismissed the action. Petitioner has three experts ready and willing to testify to the malpractice which immediately established a genuine issue of material fact. In addition she challenges Dauggart v. Pappas, supra., and Halvorsen v. Ferguson & Burdell, supra., on the grounds it creates a privileged class who need not follow the law of tort injury.

Since these cases have not been challenged previously, he claims have not be adjudicated. Neither has her claim that she was denied her right to trial by jury. (U.S. Constitution, Amendment 7.)

The cases cited by respondents do not support

their position. Williams v. State of Washington 554 F.2d 369 (9th Cir. 1977) involved asking for injunctive relief while a state action was pending. The Court stated its non-intervention policy in such cases. Only if constitutional rights were violated could the Federal Court intervene.

Clark v. Watchie 513 F.2d 994 (9th Cir. 1975) was a securities case. This case actually supports petitioner's case on the merits, which is the one she wants to appeal; however, the merits of the case is not at issue here.

It is difficult to believe that respondents' attorneys are claiming a statute of limitations in good faith. Petitioner filed in state court within the three year statute of limitations. She had to exhaust her state remedies before she should file in Federal District Court. She filed within 30 days of the exhaustion of her state court remedies, and filed her Notice of Appeal within 30 days of the Order of Dismissal, an Order prepared by Karr, Tuttle et al., on their stationery and signed by the judge exactly as requested by that firm.

See Watson v. Buck 313 U.S. 387, 61 S. Ct. 962; Huffman v. Pursue, Ltd 420 U.S. 592, 95 C. Ct. 1200; Younger v. Harris 401 U.S. 53, 91 S. Ct. 746; Juidice v. Vail ____ U.S. ____, 97 S. Ct. 1211.

The issue of Summary Judgment is the merits of the appeal and is not at issue here. Suffice it to say, if three experts are ready to testify on the issue of malpractice, then reasonable men have differed and a genuine issue of material fact exists.

(2) Reply To The Eighth Circuit Properly Refused Halvorsen's Notice of Appeal

This case is a case of first impression which is why the Court should accept it and decide it. The cases cited by respondents and their attorneys are inapplicable. Preston Co. v. Raese 335 F.2d 827 (4th Cir. 1964) and Roofing & Sheet Metal Services, Inc. v. La Quinta Motor Inns, Inc. 689 F.2d 982 (11th Cir. 1982) deal with cases already transferred.

In petitioner's Petition at 4, the grounds for that is Halvorsen v. State of Washington, supra., wherein the Ninth Circuit upheld the right of

petitioner's ex-husband to search her home four times a year and denied her her right for oral argument. They also upheld, in the same case, the decision of three state appellate judges to "retroactively waive" a law and give a lower court a jurisdiction it did not have!

The comparable worth decision is very well known and needs no further discussion.

As to petitioner's assertions at 3, respondents admit to the prominence of William Wesselhoeft of Ferguson & Burdell who represented petitioner with such disastrous results. They also admit to the prominence of Karr, Tuttle, et al. As to Philip A. Talmadge, he was quoted in both the Seattle Times and the Seattle Post-Intelligencer, Seattle's two newspapers, as vowing to raise every judge's salary in the state of Washington. He introduced the bill and shepherded it through the legislature. The judges know who raised their salaries. That salaries are now set by a citizens committee is the result of public outcry and indignation.

This confirms the point that respondents and their attorneys are well-known, powerful firms in the state of Washington.

To file a case in a court already prejudiced is a denial of due process. State v. Cater's Motor Freight (1947) 27 Wn.2d 661 at page 667 states:

The purpose of the constitutional guaranty of due process of law is to protect the individual from the arbitrary exercise of the powers of government. (Emphasis added.)

State ex rel. McFerran v. Justice Court (1940) 32 Wn.2d 544, 202 P.2d 927 states:

It is fundamental that trial before biased and prejudiced judge would constitute denial of due process of law.

and at page 549 continues:

The principle of impartiality, disinterestedness and fairness on the part of the judge is as old as the history of the courts...

In re Murchison 75 S. Ct. 623, 99 L. Ed. 942 states:

A fair trial before a fair tribunal is a basic requirement of due process, and requires an absence of actual bias in trial of the case.

(3) Reply to Halvorsen's Petition Is
Frivolous and Sanctions Should Be
Imposed Against Her

As stated above, petitioner believes the term "frivolous" introduces an arbitrary element into the law. It should be abolished. Judges find it particularly easy to impose sanctions on pro se-ers as they have no organization to speak for them and are not organized. The attorneys can then praise the judges as upstanding judges to enhance their reputations. This amounts to nothing more than a system of kickbacks.

As to the chastisement given to petitioner by the Ninth Circuit in Halvorsen v. State of Washington supra., petitioner can only reiterate that the conclusions reached by those three is erroneous. She welcomes the opportunity to correct the record. To repeat, she visited three different attorneys who felt she had a very good case. Unfortunately, each wanted in the neighborhood of \$10,000.00 to represent her on appeal. Not having that sum on hand, but thus encouraged, petitioner elected to pursue the

appeal pro se. The fact that the Ninth Circuit leaped to an erroneous conclusion supports petitioner's claim that she cannot obtain a fair hearing in the Ninth Circuit.

As to abusive pro se plaintiffs, petitioner does not believe any exist. In the United States, indeed in England previously, appeals have been provided for from the earliest times to prevent misguided figures of authority from abusing persons' rights. No one should be discouraged or intimidated from pursuing an appeal. This attempt to restrict access to the courts is the action of the defense insurance special interest group.

As the nationally known consumer protection advocate Ralph Nader, writing in 22 Gonzaga Law Review 15, "The Corporate Drive To Restrict Their Victims' Rights", warns:

It is doubtful whether there has been anything like the present attack on injured victims' rights in the two hundred year history of the American civil justice system...

In most states, as well as in Congress, proposals abound to restrict the rights of innocent victims to sue and be fully compensated for their injuries...

All of these measures are aimed at weakening the American civil justice system which, embracing as it does important concepts of justice, still confronts people with formidable tasks, to recover compensation and win their day in court. These measures are part of a legislative package advocated by the property/casualty insurance industry seeking to enrich its already huge profits at the expense of the innocent victims...

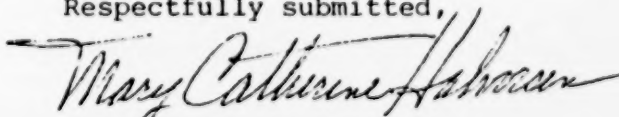
They call this package "tort reform", but it is one of the most unprincipled public relations scams in the history of American industry.

F. CONCLUSION

The Petition for Writ of Mandamus should be granted. No sanctions should be imposed. The Rule governing "frivolous" suits should be abolished and rescinded.

DATED this 3rd day of February 1988.

Respectfully submitted,

A handwritten signature in cursive script, reading "Mary Catherine Halvorsen". The signature is written in dark ink and is positioned above the printed name.

Mary Catherine Halvorsen, pro se

